

REMARKS

Presently, claims 1-4, 6-10, 12-15 and 17-51 stand rejected pursuant to 35 U.S.C. § 102(e) as being anticipated by *Van Zoest et al* (U.S. Patent No. 6,609,105). Claims 5 and 11 also stand rejected pursuant to 35 U.S.C. § 103, over *Van Zoest et al* in view of Official Notice concerning installation in an automobile and ATRAC3 format. The Applicant respectfully traverses the rejections and requests reconsideration in view of the supplemental declaration of Greg Gudorf submitted herewith.

In the present Office Action, the Examiner has essentially maintained the prior rejection over the submission of 37 C.F.R. § 1.131 declarations that establish that the Applicant conceived of the invention prior to the priority date of the *Van Zoest* reference and also exercised reasonable diligence through the constructive reduction to practice associated with the Applicant's filing of the provisional patent application related to the present application. Prior conception and reasonable diligence through constructive reduction to practice may be relied upon to disqualify a cited reference. See MPEP 715.07 (700-250).

In the current Office Action, the Examiner has however questioned the sufficiency of the dates of conception of certain aspects of the invention based on the previously submitted document that was attached to the prior declaration of Inventor Greg Gudorf. These questioned elements are (b) associating audio files with identification information, (c) storing audio files at a central location on at least a portion of a storage media uniquely associated with the identification information and (d) receiving at the central location the identification information from a second device. Applicant requests that the Examiner reconsider as the conception of the identified elements is sufficiently contained in the previously submitted documentary evidence. To this end, Applicant submits the

supplemental declaration of Greg Gudorf to discuss the previously submitted document and its support of the conception of the identified features prior to the date of the Van Zoest reference. Nevertheless, Applicant respectfully reminds the Examiner that an accompanying exhibit need not support all claimed limitations, provided that any missing limitation is supported by the declaration itself. MPEP 715.07 (700-250); See also *Ex parte Ovshinsky*, 10 USPQ2d 1075 (Bd. Pat. App. & Inter. 1989). Applicant's declarations clearly indicate the prior conception of the questioned elements.

Accordingly, Applicant respectfully requests that the Examiner withdraw the rejection.

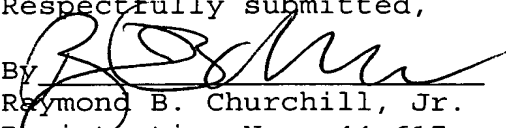
As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he/she telephone applicant's attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: March 15, 2006

Respectfully submitted,

By 
Raymond B. Churchill, Jr.
Registration No.: 44,617
LERNER, DAVID, LITTENBERG,
KRUMHOLZ & MENTLIK, LLP
600 South Avenue West
Westfield, New Jersey 07090
(908) 654-5000
Attorney for Applicant